

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SHEPARD FAIREY and OBEY GIANT ART, INC.

Plaintiffs,

v.

THE ASSOCIATED PRESS and MANNIE GARCIA,

Defendants.

v.

SHEPARD FAIREY, OBEY GIANT ART,
INC., OBEY GIANT LLC and STUDIO
NUMBER ONE, INC.

Counterclaim Defendants.

09 CIV 01123 (AKH)

ANSWER TO COUNTERCLAIMS OF PLAINTIFFS

Defendant-Intervener and Counterclaim Plaintiff Mannie Garcia (“Mr. Garcia”) by and through his attorneys, hereby answers the counterclaims brought by Plaintiffs/Counterclaim Defendants Shepard Fairey, Obey Giant Art, Inc., Obey Giant LLC, and Studio Number One, Inc. (collectively “Fairey”) as follows:

NATURE OF THE ACTION

1. Denies the allegations contained in Admits the allegations contained in ¶ 1 of the Counterclaims, except admit that this is a civil action for declaratory and injunctive relief.

2. Denies the allegations contained in ¶ 2, except admits that Mr. Garcia asserts that Fairey’s work infringes his copyright in the Obama Photo.

PARTIES

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 3.

4. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 4.

5. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 5.

6. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 6

7. Admits the allegations contained in ¶ 7..

JURISDICTION

8. States that the allegations contained in ¶ 8 are conclusions of law as to which no responsive pleading is required, but that to the extent any response is necessary, admits that this Court has subject matter jurisdiction over these claims.

9. States that the allegations contained in ¶ 9 are conclusions of law as to which no responsive pleading is required, but that to the extent any response is necessary, admits that this Court has personal jurisdiction over Mr. Garcia.

10. States that the allegations contained in ¶ 10 are conclusions of law as to which no responsive pleading is required, but that to the extent any response is necessary, admits that venue is proper in this District.

FACTUAL BACKGROUND

11. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 11.

12. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 12.

13. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 13.

14. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 14.

15. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 15.

16. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 16, except admits that Mr. Garcia took the photograph referenced in said paragraph.

17. Admits that the photograph referenced in said paragraph was taken by Mr. Garcia.

18. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 18.

19. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 19.

20. Denies the allegations of ¶ 20, except admits that Mr. Fairey used a photograph taken by Mr. Garcia to create his poster and thereby infringed Mr. Garcia's copyright.

21. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 21.

22. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 22.

23. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 23.

24. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 24.

25. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 25.

26. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 26.

27. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 27.

28. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 28.

29. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 29.

30. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 30.

31. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 31.

32. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 32.

33. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 33.

34. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 34.

35. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 35.

36. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 36, except to deny that the photo Fairey appropriated was not the so-called "Garcia Photograph (Exhibit A)."

37. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 37.

38. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 38.

39. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 39.

40. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 40.

41. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 41.

42. Denies knowledge or information sufficient to form a belief as to the allegations contained in ¶ 42.

43. Admits the allegations contained in ¶ 43.

44. Admits the allegations contained in ¶ 44.

45. Admits the allegations contained in first ¶ 45, except denies that Mr.

Garcia stated in interviews that he was not "angry with Fairey or interested in joining any lawsuits".

(Second ¶45). Admits the allegations contained in the second ¶ 45

46. Admits the allegations contained in ¶ 46.

**FIRST COUNTERCLAIM – DECLARATORY JUDGMENT –
NON-INFRINGEMENT**

47. Mr. Garcia incorporates by reference all of his answers to ¶¶ 1-46, above as if fully set forth herein.

48. State that the allegations contained in ¶ 48 are conclusions of law to which no responsive pleading is necessary, but to the extent a response is required denies the same.

49. State that the allegations contained in ¶ 49 are conclusions of law to which no responsive pleading is necessary, but to the extent a response is required denies the same.

**SECOND COUNTERCLAIM – DECLARATORY JUDGMENT –
FAIR USE**

50. Mr. Garcia incorporates by reference all of his answers to ¶¶ 1-49, above as if fully set forth herein

51. State that the allegations contained in ¶ 51 are conclusions of law to which no responsive pleading is necessary, but to the extent a response is required denies the same.

52. Denies the allegations contained in ¶ 52.

53. States that the allegations contained in ¶ 53 are conclusions of law to which no responsive pleading is necessary, but to the extent a response is required denies the same and further denies that the "Garcia photograph" as defined in Plaintiffs' Answer and Counterclaims was used by Mr. Fairey to create the Obama posters.

54. Denies the allegations contained in ¶ 54.

55. Denies the allegations contained in ¶ 55.

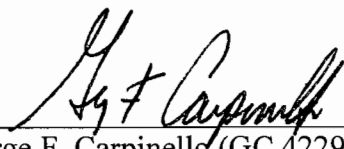
56. States that the allegations contained in ¶ 56 are conclusions of law to which no responsive pleading is necessary, but to the extent a response is required denies the same.

PRAYER FOR RELIEF

57. Repeats and realleges each and every response from ¶¶ 1-56, above, as if fully set forth herein. Denies that the AP is entitled to any relief whatsoever.

Date: Sept. 3, 2009

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